

EXHIBIT 18

LEXSTAT CA LAB C 3212

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LABOR CODE
Division 4. Workers' Compensation and Insurance
Part 1. Scope and Operation
Chapter 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Lab Code § 3212 (2007)

§ 3212. "Injury"; Certain persons engaged in law enforcement and firefighting; Compensation for hernia, heart trouble or pneumonia; Presumption

In the case of members of a sheriff's office or the California Highway Patrol, district attorney's staff of inspectors and investigators or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether those members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, the term "injury" as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while the member is in the service in the office, staff, division, department, or unit, and in the case of members of fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers, and in the case of county forestry or firefighting departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes pneumonia and heart trouble that develops or manifests itself during a period while the member is in the service of the office, staff, department, or unit. In the case of regular salaried county or city and county peace officers, the term "injury" also includes any hernia that manifests itself or develops during a period while the officer is in the service. The compensation that is awarded for the hernia, heart trouble, or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. The presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

HISTORY:

Enacted 1937. Amended Stats 1939 ch 256 § 1; Stats 1945 ch 742 § 1; Stats 1947 ch 1210 § 1; Stats 1949 ch 730 § 1; Stats 1955 ch 797 § 1; Stats 1959 ch 758 § 1; Stats 1965 ch 1513 § 52.5, operative January 15, 1966, ch 1690 § 1; Stats 1971 ch 562 § 1; Stats 1976 ch 466 § 1; Stats 1980 ch 676 § 229. Amended Stats 1992 ch 427 § 121 (AB 3355); Stats 2001 ch 833 § 2 (AB 196); Stats 2002 ch 664 § 164 (AB 3034).

LEXSTAT CAL LAB CODE § 3212.1

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Cal Lab Code § 3212.1 (2007)

§ 3212.1. Development or manifestation of cancer in active firefighters; Rebuttable presumption

(a) This section applies to active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments: (1) a fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision, (2) a fire department of the University of California and the California State University, (3) the Department of Forestry and Fire Protection, and (4) a county forestry or firefighting department or unit. This section also applies to peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of *Section 830.37, of the Penal Code*, who are primarily engaged in active law enforcement activities.

(b) The term "injury," as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(c) The compensation that is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) The amendments to this section enacted during the 1999 portion of the 1999-2000 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

HISTORY:

Added Stats 1982 ch 1568 § 1. Amended Stats 1984 ch 114 § 1; Stats 1988 ch 1038 § 1; Stats 1989 ch 1171 § 2. Amended Stats 1999 ch 595 § 1 (AB 539); Stats 2000 ch 887 § 1 (SB 1820).

LEXSTAT CAL LAB CODE § 3212.5

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Cal Lab Code § 3212.5 (2007)

§ 3212.5. Compensability of heart trouble or pneumonia for members of police department or State Highway Patrol, sheriffs or deputies, inspector or investigator

In the case of a member of a police department of a city or municipality, or a member of the State Highway Patrol, when any such member is employed upon a regular, full-time salary, and in the case of a sheriff or deputy sheriff, or an inspector or investigator in a district attorney's office of any county, employed upon a regular, full-time salary, the term "injury" as used in this division includes heart trouble and pneumonia which develops or manifests itself during a period while such member, sheriff, or deputy sheriff, inspector or investigator is in the service of the police department, the State Highway Patrol, the sheriff's office or the district attorney's office, as the case may be. The compensation which is awarded for such heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment; provided, however, that the member of the police department, State Highway Patrol, the sheriff or deputy sheriff, or an inspector or investigator in a district attorney's office of any county shall have served five years or more in such capacity before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

The term "members" as used herein shall be limited to those employees of police departments, the California Highway Patrol and sheriffs' departments and inspectors and investigators of a district attorney's office who are defined as peace officers in *Section 830.1, 830.2, or 830.3 of the Penal Code*.

HISTORY:

Added Stats 1939 ch 627 § 1. Amended Stats 1943 ch 255 § 1; Stats 1949 ch 693 § 1; Stats 1955 ch 797 § 2; Stats 1959 ch 758 § 2; Stats 1965 ch 940 § 1, ch 1513 § 54, operative January 15, 1966; Stats 1968 ch 1100 § 1; Stats 1971 ch 562 § 2; Stats 1972 ch 618 § 109; Stats 1976 ch 466 § 5.

LEXSTAT CAL LAB CODE § 3212.8

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Cal Lab Code § 3212.8 (2007)

§ 3212.8. "Injury" as including blood-borne infectious disease

(a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with *Section 830*) of *Title 3 of Part 2 of the Penal Code*, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes a blood-borne infectious disease when any part of the blood-borne infectious disease develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for a blood-borne infectious disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) The blood-borne infectious disease so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) The blood-borne infectious disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(d) For the purposes of this section, "blood-borne infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

HISTORY:

Added Stats 2000 ch 490 § 1 (SB 32). Amended Stats 2001 ch 833 § 4 (AB 196).

Cal Lab Code § 3212.85

Added Stats 2002 ch 870 § 3 (AB 1847).

LEXSTAT CAL LAB CODE § 3212.9

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Cal Lab Code § 3212.9 (2007)

§ 3212.9. "Injury" including meningitis

In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, when that person is employed on a regular, full-time salary, or in the case of a member of a fire department of any city, county, or district, or other public or municipal corporation or political subdivision, or any county forestry or fire-fighting department or unit, when those members are employed on a regular full-time salary, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or firefighting, such as stenographers, telephone operators, and other officeworkers, the term "injury" includes meningitis that develops or manifests itself during a period while that person is in the service of that department, office, or unit. The compensation that is awarded for the meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

HISTORY:

Added Stats 2000 ch 883 § 1 (AB 2043). Amended Stats 2001 ch 833 § 5 (AB 196).

LEXSTAT CAL LAB CODE § 3212.11

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Cal Lab Code § 3212.11 (2007)

§ 3212.11. Skin cancer as "injury" for lifeguards arising out of and in the course of employment

This section applies to both of the following: (a) active lifeguards employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision, and (b) active state lifeguards employed by the Department of Parks and Recreation. The term "injury," as used in this division, includes skin cancer that develops or manifests itself during the period of the lifeguard's employment. The compensation awarded for that injury shall include full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as provided by the provisions of this division.

Skin cancer so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board shall find in accordance with it. This presumption shall be extended to a lifeguard following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Skin cancer so developing or manifesting itself in these cases shall not be attributed to any disease existing prior to that development or manifestation.

This section shall only apply to lifeguards employed for more than three consecutive months in a calendar year.

HISTORY:

Added Stats 2001 ch 846 § 1 (AB 663).

LEXSTAT CAL LAB CODE § 3212.12

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Cal Lab Code § 3212.12 (2007)

§ 3212.12. Lyme disease as injury for specified peace officers and corpsmembers

(a) This section applies to peace officers, as defined in subdivision (b) of *Section 830.1 of the Penal Code*, subdivisions (e), (f), and (g) of *Section 830.2 of the Penal Code*, and corpsmembers, as defined by *Section 14302 of the Public Resources Code*, and other employees at the California Conservation Corps classified as any of the following: Click [here](#) to view image.

(b) The term "injury," as used in this division, includes Lyme disease that develops or manifests itself during a period in which any person described in subdivision (a) is in the service of the department.

(c) The compensation that is awarded for Lyme disease shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) Lyme disease so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the Lyme disease is not reasonably linked to the work performance. Unless so controverted, the appeals board shall find in accordance with the presumption. This presumption shall be extended to a person described in subdivision (a) following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

HISTORY:

Added Stats 2002 ch 876 § 1 (AB 2125).

LEXSTAT CAL LAB CODE § 3213.2

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Cal Lab Code § 3213.2 (2007)

§ 3213.2. "Injury" including lower back impairment for certain law enforcement employees

(a) In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a peace officer employed by the Department of the California Highway Patrol, or a peace officer employed by the University of California, who has been employed for at least five years as a peace officer on a regular, full-time salary and has been required to wear a duty belt as a condition of employment, the term "injury," as used in this division, includes lower back impairments. The compensation that is awarded for lower back impairments shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

(b) The lower back impairment so developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) For purposes of this section, "duty belt" means a belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement.

HISTORY:

Added Stats 2001 ch 834 § 1 (SB 424).

EXHIBIT 19



FINAL REPORT

THE CITY MANAGER'S COMMITTEE TO REVIEW THE DISABILITY RETIREMENT SYSTEM

April 14, 2005

BACKGROUND

The City's Pension Reform Committee (PRC) issued its Final Report, dated September 15, 2004. Within the PRC Report was Recommendation #16:

"The City should establish a committee to review the entire disability retirement system. Representatives on this committee should include knowledgeable employees of both the City and SDCERS as well as outside professionals with experience in this area."

On September 30, 2004, City Manager's Report No. 04-218 proposed to the City Council that the City Manager appoint a Committee by October 30, 2004 to review the entire Disability Retirement system and provide a status report back by January 14, 2005. Council subsequently adopted this recommendation and the following Committee was appointed:

- Greg Bych, Deputy Director, Risk Management (Chair)
- Lori Chapin, SDCERS General Counsel
- David Dugan, Dugan and Rader
- Larry Grissom, SDCERS Administrator
- Debra Hollingsworth, Deputy City Attorney
- Anne Stephenson, Vice President Compensation and Benefits, Sharp Healthcare
- Richard Vortmann, President, Nassco (SDCERS Boardmember)

In addition to the primary Committee members, Paul Barnett, Assistant Retirement Administrator, Sheila Jacobs, SDCERS Associate Counsel and Robert Mulcahy, Deputy City Attorney served as alternates in the absence of the primary Committee members.

The Committee held its initial meeting on November 22, 2004 and reviewed the following related materials: Manager's Report No. 04-218, Pension Reform Committee Report, Pension Reform Committee Minority Report, Workers' Compensation Permanent Disability rating process, City Employees Retirement System process, Double Payments of Workers' Compensation and Disability Retirement benefits memorandum.

The Pension Reform Committee Report highlighted that the complexities and nuances of Disability Retirements have created a system that appears ripe for abuse. It was also pointed out that these issues present a significant operational impact to the City, in particular the Police and Fire departments.

Additionally it was pointed out that the SDCERS Board does not have either the legal or the medical expertise to make Disability Retirement determinations and that the City is perceived to offer an "attractive" benefit because financial incentives are built into the Disability Retirement. There is also lack of monitoring of those deemed disabled.

Lastly, one of the primary problems with the City's Disability Retirement benefit is the perceived "catch 22" between the Workers' Compensation standard of disabled vs. the

SDCERS standard of disabled (the SDCERS standard is significantly higher). This “catch 22” leaves employees in an uncertain state and has cost and operational impacts to City departments.

The Committee held a total of ten meetings to discuss the issues and formulate its recommendations.

COMMITTEE APPROACH

The Committee spent significant time at its initial meetings discussing the *purpose and intent* of a Disability Retirement. Is it a wage replacement program in terms of a “*safety net*” or a “*total wage replacement*” program regardless of other employment/income opportunities that may exist. The Committee agreed upon the following:

- The SDCERS definition applies when one is incapable of doing their specific job.
- The Social Security definition applies when one is incapable of any gainful employment.
- Workers’ Compensation is intended to compensate for a work related injury.
- The disability benefit should be an income/wage replacement program that considers other income sources.

While there was not universal agreement by the Committee, the following perspectives were also discussed. The disability retirement should be a safety net for truly injured workers; it should not be an enabling tool for employees to collect their retirement benefits 50% tax exempt nor should it enable workers, if they are disabled, to collect additional income from employment elsewhere.

To understand the scope of the Disability Retirement issues the Committee requested the problem be quantified. Disability Retirements make up approximately 22.4% (1,231/5,500) of all SDCERS retirements. Of those, General Members Disability Retirements make up roughly 8% (436/5,500) and Safety Members Disability Retirements make up roughly 14.4% (795/5,500). Safety Members constitute 64.6% (795/1,231) of the total Disability Retirements and 34.5% (795/2,300) of Safety Members are on a Disability Retirement.

	All Retirements	Regular Retirements	Disability Retirements
General Members	3,200	2,764	436
Safety Members	2,300	1,505	795
All Retirees	5,500	4,269	1,231

It is important to note that there is no difference to the City between a Service Retirement and a Disability Retirement if the employee is age and service eligible. The cost to the City is the same. The difference is the employee may receive the first 50% of their disability income tax exempt, until age 65, pursuant to Federal Internal Revenue Code.

However, SDCERS Disability Retirements paid to non age/service eligible employees cost approximately \$30 million in FY 2004.

COMPARISON WITH OTHER AGENCIES

SDCERS conducted an informal survey of fellow California Association of Public Retirement Systems (CALAPRS) members, including CalPERS, Fresno, Imperial County, Los Angeles County, San Joaquin County, Sonoma County and San Diego County. The survey results demonstrate that disability plan design and benefits, with a few exceptions, are very similar to SDCERS.

It was also noted that the City has limitations on Disability Retirements that other agencies do not. While both the County Retirement Act of 1937 and PERS include the Workers' Compensation presumptive benefits for safety members (heart, hernia, pneumonia, blood borne disease, cancer, etc), SDCERS does not. Nor does SDCERS cover psychiatric conditions that many other agencies include. All retirement systems place the burden of proof on the applicant to prove they are entitled to the benefit and many of these benefits are subject to and negotiated through the meet and confer process. (For example the City's psychiatric benefit was repealed in 1982.) Another significant difference is that the County Retirement Act of 1937 and the State may rely on the Workers' Compensation determination for causation only. This is a considerably more liberal approach than SDCERS.

The Committee reviewed the various definitions of disability, including the County Retirement Act of 1937, PERS, Social Security and the City of San Diego. While the disability definition is very similar among PERS, the County Retirement Act of 1937 and the City, the City's standard for causation is higher than these others. The Social Security definition is much stricter. The Social Security definition means the employee is incapable of any gainful employment. Other systems also employ income offsets and ongoing determinations regarding disability to ensure the disability benefit is neither overly attractive nor abused.

The Committee also reviewed the City/County of San Francisco plan model. Although the Committee agreed that it's not a model of what the City would want to adopt because of its own inefficiencies, it noted that two significant differences are that San Francisco does not pay for health insurance and it does have offsets for Workers' Compensation. It does not have annual affidavits or re-examinations.

The Committee acknowledged that the problems associated with Disability Retirements are not unique to San Diego. The League of California Cities is similarly reviewing the Disability Retirement benefit. The California State Association of Counties (CSAC) is also reviewing reform language, which includes the following proposals:

- Disability Retirements discontinued for any period of time the disabled employee participates in similar work with another public agency.

- Employees who qualify for both an Industrial Disability Retirement and regular service retirement should be required to choose one or the other option.

There are multiple new Assembly and Senate Bills circulating with the intent of addressing similar issues for public agencies state wide.

LABOR UNION INPUT

At its' January 24, 2005 meeting the Committee invited the City's four labor organizations to present their issues and concerns pertaining to the Disability Retirement benefit. The committee heard comments from Local 127 and the Police Officer's Association (POA). Representatives from the Municipal Employees Association (MEA) and Local 145 did not attend.

Local 127 reported that General Members do not present a big drain on the SDCERS system and that Local 127 does not see a need, nor want, to change the benefit. They stated their opposition to using the Social Security definition of disabled for the City's plan and that the problem that needs correcting is the "catch 22" when a Workers' Compensation doctor considers an employee disabled from performing their duties but SDCERS does not. Local 127 provided data that compared the City's benefit to several comparable cities citing that this benefit is virtually universal in the public sector and the City's benefit is comparable, if not lower, than the other agencies.

The POA cited issues that they believe are problematic and need to be addressed by the City. The first of these are the excessive delay for SDCERS to make decisions on Disability Retirements. Next was the inconsistency between the State Workers' Compensation definition and SDCERS definition. Also an issue is the reliance by SDCERS on the applicant's ability to perform the duties of their current job, which may be light duty and not an accurate reflection of their job description. Lastly, there is a need for presumptions and pre-existing exclusions to be clearly understood by employees at the date of their hire as to how their conditions will impact their eligibility for a Disability Retirement. In particular, the POA finds it unacceptable that presumptives are not included.

COMMITTEE DISCUSSION AND OBSERVATIONS

The Committee spent numerous hours discussing the purpose, benefits and problems with the City's Disability Retirement benefit. Although much of that is difficult to capture for the purposes of this report, there were numerous observations made by the Committee worthy of including to enable a greater understanding of the final recommendations. Those observations are included below.

- For those who are age and service eligible, the Disability Retirement benefit will not pay more than their earned pension. However, many of those who are age and service eligible apply for Disability Retirement solely to claim the 50% tax

exempt benefit. That is the "attractive" benefit. If the benefit were constructed to be less attractive, that would solve a large portion of the existing problems.

- Short term solutions could include such things as reinstatement of earlier provisions and the addition of a provision that, if one is age and service eligible, then they are not eligible for a Disability Retirement.
- DROP participants are filing for a large percentage of the Disability Retirements; presuming the age/service issue was addressed that would resolve a significant number of the Disability Retirement applications backlog at SDCERS.
- Part of the problem is the connotation of a "Disability Retirement". The Committee suggested that the plan be called "Disability Benefit" or "Disability Compensation Program" until such time the employee becomes age and service eligible for a regular retirement.
- The Committee discussed income offsets on numerous occasions and in great detail. It was discussed that disability income, plus any outside income, should not exceed pre-disability income levels. If this combination of income exceeds the pre-disability income, income should be offset. Additionally, the Committee discussed the definition of disability in terms of an employee's ability to do his/her *specific* job vs. their ability to be gainfully employed in *another* job class.
- There is current plan design information included in the Municipal Code which needs to be cleaned up in association with any plan design changes undertaken by the City, including some of the following:
 - S 24.0501: Vesting
 - S 24.0509: Annual affidavit of disability
 - S 24.0510: Periodic physical exams
 - S 24.0515: Workers' Compensation offsets
 - Creation of anti-fraud provisions
- The Committee discussed an alternative to the SDCERS administered approach and suggested that a City purchased insurance plan may be an alternative way to proceed with providing disability benefits.

The Committee reviewed a comparative analysis of plans, comparing the City's Short Term Disability, LTD and Disability Retirement benefits with those of two large, local, private sector companies. While all three organizations have short term and long term disability plans, the most significant difference between the three plans is the City's Disability Retirement benefit. While the private sector companies did provide a disability benefit, they did not offer a disability benefit that was associated with their Defined Benefit (DB) plan as the City does. The Committee agreed that this difference is typical between public and private sector employees, and changing the City benefit to combine the LTD and Disability Retirement benefits would be more akin to a private sector benefit offering.

The Committee reviewed a matrix that combined the City's LTD benefit with the City's Disability Retirement benefit, essentially collapsing the two different plans into one integrated LTD plan. This matrix included the primary elements of concern to the Committee, namely income offsets, annual medical determinations and fraud provisions.

CORE ISSUES

Throughout the Committee's meetings there were a core set of issues that consistently surfaced as those most needing to be addressed. Those issues are:

- Fraud provisions
- Income offsets
- Periodic Medical Examination
- Affidavit of Disability
- Clearly stated definition of disability
- City-paid health insurance coverage
- Impact of DROP participants

These issues emerged as the primary drivers behind the Committee's final recommendations. While the Committee recognizes that some of these issues are more complex than others, it also noted that these issues must be considered collectively in order to have an effective plan. The Committee went on to develop multiple solutions for the City Manager to consider.

On several of these core issues the Committee identified inconsistencies between Municipal Code language and SDCERS Disability Retirement administration that need both clarification and clean up. It was recommended that after the Committee completes its work the City Manager conduct a thorough legal review of the recommendations and existing Municipal Code language before proceeding further.

RECOMMENDATIONS

As reported previously, the Committee developed multiple solutions for the City Manager's action. These solutions are described as follows:

1. Short term solutions: Solutions with a significant impact that can be quickly and easily implemented by the City.
2. Medium term solutions: Solutions with a significant impact that may be more complicated and time consuming to implement due to the Meet and Confer process with the City's labor organizations.
3. Long term solutions: Presuming that the immediate issues facing the City can be dealt with by implementation of the short and medium term solutions, the long term solution represents a new way for the City to consider the implementation of

the disability benefit. Changes are significant and will need further study and analysis, including cost analysis.

Short term solutions

1. Recommendations requiring SDCERS Board action:

- a. Implementation of fraud provisions. Adoption by SDCERS of procedures for active fraud investigation and a policy for referral to the District Attorney's economic fraud unit for fraudulent applications.

The City should request SDCERS to add language to all relevant forms, letters, etc. related to application for SDCERS Disability Retirement indicating that false statements will subject the applicant to civil and criminal penalties. SDCERS must actively prosecute fraud, work with the District Attorney's economic fraud unit and file civil suits against those who use false statements to gain benefits.

- b. SDCERS' Disability Retirement hearings should be structured to result in "final" decisions for purposes of appeal to the superior court. Giving "final" decision-making authority to the adjudicator would allow the process to move more quickly without Board involvement and would afford the Board the same rights of appeal now available to the applicant.
- c. The Board should adopt the Administrative Procedures Act (APA) to govern all matters referred for hearing. The APA, which governs many public entities hearing processes, is an easy to follow, easy to understand, well-established series of laws that would allow lawyers, judges, applicants and the public to understand what is required and expected in all Board hearings.

The Committee unanimously supported recommendations (a) and (c), and the majority of the Committee supported recommendation (b).

2. Utilize SDMC section 24.0510, "Periodic Physical Exams of Disability Retirees".

The Committee discussed and reviewed alternative language for this section. However, the Committee expressed concern that modifying the existing language may subject it to the meet and confer process and as such agreed the existing language should simply be enforced.

Medium term solutions

The Committee recommends the City Manager take the following actions with respect to plan design to the Meet and Confer process.

1. Adoption of Proposed DROP language

Per the last SDCERS audit, the DROP program has had a significant, unintended consequence on the Disability Retirement issue. The Committee therefore recommends that DROP language be added as follows:

"By entering DROP, a participant waives the right to claim permanent incapacity for purpose of disability retirement for all medical conditions or physical injuries which are known to the participant or should have been known upon reasonable inquiry as of the date of entry into the DROP program. DROP participants may apply for disability retirement based on medical conditions or physical injury which occurs after the date of the participant's entry into DROP."

The intent of this language is to ensure that employees are informed about their rights before entering DROP while limiting Disability Retirements for DROP participants to those events occurring after an employee enters DROP. Out of 54 employees who currently meet the service eligibility requirements and are seeking a Disability Retirement, 45 are in DROP.

Adoption of this language promotes entering DROP for the right reasons and removes the attractive incentive to file for a Disability Retirement in the last year of the DROP program. Once adopted, this language would apply prospectively to employees who have not yet entered DROP and would minimize further perceived abuse of the system.

2. Disability Retirement applications for those age and service eligible

Disability Retirements for those age and service eligible, whether non-industrial or industrial, will receive their Service Retirement. This amount shall not be subject to any income offsets or other adjustments related to the disability benefit. In addition, the employee may be entitled to federal tax exemption on a portion of that Service Retirement pursuant to IRC section 104(a).

3. Add statutory language to the municipal code requiring all recipients of industrial or non-industrial Disability Retirement benefits to submit true and correct signed copy of their Federal income tax return annually as a condition of continued payment of the benefit and for the purpose of calculating an income offset. Reinstate SDMC section 24.0514 and 24.0516, repealed in 1987 as a part of meet and confer, or create new language to replace these sections.
4. Reinstate SDMC 24.0515, Industrial Disability, Workers' Compensation offsets and expand the offsets to include all other W-2 reportable income. Require Disability Retirement recipients to provide a copy of their Federal income tax return annually as verification of other income. Enact offsets at the point income meets/exceed 100% of pre-disability wages.

5. Eliminate, or cap, City paid health insurance coverage for non age/service eligible applicants for a Disability Retirement.

While there was a consensus among the Committee supporting these recommendations, it was not unanimous on all items.

Additionally, there are administrative costs to several of these recommendations. The Committee's intent was to establish good policy, and in its limited time did not have time to research or review these potential costs. While the review of annual income tax forms and reexaminations could be done by SDCERS staff, it could also be outsourced to firms specializing in these functions. As such, the Committee recommends that further analysis and options be explored by SDCERS to ensure that the policies adopted are administered efficiently and cost effectively.

Long term solutions

Presuming that the immediate issues facing the City can be dealt with by implementation of the short and medium term solutions, the long term solution represents a new way for the City to consider the implementation of the disability benefit. Changes are significant and will need further study and analysis, including costs.

The long term solution essentially creates a "combined" disability benefit consisting of the Long Term Disability (LTD) and the Disability Retirement. This maintains the disability benefit for those who truly need it without making the Disability Retirement an attractive benefit to be potentially abused. Although it does not affect all other benefits administered by SDCERS, it is a significantly different method of offering the disability benefit and is more in line with a private sector benefit than a public sector benefit. Because the City and SDCERS are legally separate entities, if the Disability Retirement benefit were combined with a City administered benefit under a new title, it would be necessary for the City to make all decisions and provide all administration related to the combined benefits.

The City will need to evaluate whether it can take away the Disability Retirement benefit and replace it with a general disability benefit. There are many cases in this area of the law and it is well settled that the ability of the employer to modify a plan is restricted. If a trade can be made removing the "retirement" benefit and adding a general benefit, it will need to be established that the new plan adds something of value in lieu of the benefits taken away. While removing certain benefits, this proposal does in fact also offer new benefits of value. The attached matrix, Attachment 1, documents these benefits.

This long term solution represents a new way of providing the disability benefit. Before it could be implemented, there are a variety of legal and cost issues that need further analysis, and thus the Committee has provided and emphasizes the importance of

immediately pursuing both the short term and medium term solutions contained in this report.

SUMMARY

The Committee spent a significant amount of time evaluating the complex issues pertaining to Disability Retirements and does not believe the City can continue to offer the benefit the way it is structured and administered today. The Committee's goals were simple:

1. Continue to provide a Disability Benefit for those truly in need of it
2. Administer it in such a way that prevents abuse of the benefit and the SDCERS system
3. Provide it in such a way that is fiscally responsible to the taxpayers of the City of San Diego

The Committee believes that the recommendations herein accomplish these goals. The Committee strongly encourages the City Manager to move quickly to implement both the short term and medium term solutions, addressing both structure (plan design) and administration issues while considering a longer term approach to restructuring the benefit and conducting the additional due diligence required.

Gregory J. Bych, Chair

EXHIBIT 20

June 2006 June 2007
RETIREMENT AND WORKERS' COMPENSATION SPREADSHEET

Month/ Year	ALL Retirements (Service and Industrial Disability)*		INDUSTRIAL DISABILITY*			Workers' Comp Claims**	
	Total #	# of Safety Members	# of General Members	# Industrial Disability of ALL members	# of Safety Members granted Industrial Disability	# of General Members granted Industrial Disability	# for Safety Members with Industrial Disability (w/in 5 years prior to retirement)
Jun-06	16	4	12	2	2	0	3
Jul-06	8	1	7	0	0	0	0
Aug-06	7	2	5	4	2	2	6
Sep-06	7	2	5	1	0	1	0
Oct-06	9	0	9	2	0	2	0
Nov-06	8	1	7	1	1	0	5
Dec-06	11	3	8	2	2	0	7
Jan-07	11	0	11	0	0	0	0
Feb-07	10	1	9	1	0	1	0
Mar-07	10	6	4	3	2	1	6
Apr-07	5	0	5	0	0	0	0
May-07	9	3	6	4	3	1	3
Jun-07	19	6	13	2	2	0	8
Totals	130	29	101	22	14	8	38

22% 17% 36%
% of safety vs. total # % of Industrial v. total # of % of safety granted Industrial vs. total Industrial # % of general vs. total Industrial #

11% 6%
% of safety granted Industrial vs. total # of ALL retirements % of general granted Industrial vs. total ALL retirements

* Data extracted from SDCERS online Monthly Agendas and Meeting Summaries
** Data extracted from VOS as of November 2007